

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

FMC CORPORATION,)

Defendant.)

CIVIL ACTION NO. 05-5663

CONSENT DECREE

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	
)	CIVIL ACTION NO. 05-5663
v.)	
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FMC CORPORATION,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter against FMC Corporation ("Settling Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the East 10th Street Site, Marcus Hook, Delaware County, Pennsylvania ("the Site").

B. Settling Defendant asserts that it has a claim in contribution against the United States Department of Commerce and other departments, agencies or instrumentalities of the United States, as defined below ("Settling Federal Agencies") pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 113(f), together with other claims, and seeks to recover certain costs it has allegedly

incurred in response to the release or threatened release of hazardous substances at the Site.

C. Settling Defendant does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim that may be asserted by Settling Defendant.

D. The objectives of the Parties in entering into this Consent Decree are to reflect three negotiated settlements that are consistent with the objectives of CERCLA: (1) a settlement to resolve the claims of the United States on behalf of EPA ("Plaintiff") against Settling Defendant regarding Past Response Costs as defined in Section IV below, and Settling Defendant's claims, if any, against Plaintiff concerning FMC Past Response Costs, as defined in Section IV below, but where both Plaintiff and Settling Defendant reserve any rights as to each other concerning any other costs; (2) a settlement to resolve the claims of the Settling Defendant which have been or could have been asserted against Settling Federal Agencies regarding Settling Federal Agencies Matters Addressed as defined in Section IV below; and (3) covenants among the federal agencies concerning certain potential issues related to the Site.

E. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

“Consent Decree” shall mean this Consent Decree. In the event of conflict

between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“Effective Date” shall mean the date that this Consent Decree is entered by the Court.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs that the United States incurs after the date of lodging of this Consent Decree in performing any response action at or in connection with the Site, including but not limited to reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the response actions at the Site, or otherwise implementing, overseeing, or enforcing this Consent Decree. Such costs shall include payroll costs, contractors costs, travel costs, laboratory costs, and other costs incurred after the date of lodging of this Consent Decree. Future Response Costs shall expressly include oversight costs. However, notwithstanding the foregoing and any other provision of this Consent Decree, Future Response Costs shall not

include any costs, expenses, damages, liabilities or other amounts, however characterized, for alleged injury to, destruction of, or loss of natural resources, or for any natural resource damage assessments, nor shall it include any costs, expenses, damages, liabilities or other amounts, however characterized, incurred by the United States or any other person with respect to any location other than the Site or other than in connection with the release or threatened release of hazardous substances at the Site.

“FMC Future Response Costs” shall mean all costs that FMC incurs after the date of lodging of this Consent Decree at the Site or in connection with the release or threatened release of hazardous substances at the Site, including but not limited to direct and indirect costs and any and all administrative costs. FMC Future Response Costs shall include, but not be limited to, all Future Response Costs, as defined above, and all costs paid to reimburse PADEP Costs. However, notwithstanding the foregoing and any other provision of this Consent Decree, FMC Future Response Costs shall not include any costs, expenses, damages, liabilities or other amounts, however characterized, for alleged injury to, destruction of, or loss of natural resources, or for any natural resource damage assessments, nor shall it include any costs, expenses, damages, liabilities or other amounts, however characterized, incurred by the United States, Settling Defendant, or any other person with respect to any location other than the Site or other than in connection with the release or threatened release of hazardous substances at the Site.

“FMC Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that FMC has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date. FMC

Past Response Costs shall include, but not be limited to, all Past Response Costs, as defined below, and all costs paid to reimburse PADEP Costs incurred through the date of lodging of this Consent Decree.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“PADEP” shall mean the Pennsylvania Department of Environmental Protection and its predecessors and successors.

“PADEP Costs” shall mean all costs incurred and to be incurred in the future by PADEP at the Site or in connection with the release or threatened release of hazardous substances at the Site.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Settling Defendant.

“Past Response Costs” shall mean all costs, including but not limited to direct, indirect, and oversight costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States on behalf of EPA.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean FMC Corporation.

“Settling Federal Agencies” shall mean the Department of Commerce and the General Services Administration. Settling Federal Agencies shall also include any predecessor or successor departments or instrumentalities of the United States, in the capacity and to the extent that they have succeeded to the liabilities of the War Production Board, the Defense Plant Corporation or any other department, agency or instrumentality of the United States that was involved with the Site in and around World War II.

“Settling Federal Agencies Matters Addressed,” as used in Section I and in Paragraphs 19 and 23 below, shall mean Future Response Costs, FMC Future Response Costs, FMC Past Response Costs, PADEP Costs, and Past Response Costs.

“Site” shall mean the East 10th Street Superfund Site, encompassing approximately 36 acres, located at 201 East 10th Street, Marcus Hook, Delaware County, Pennsylvania. A map of the Site is attached as Appendix A.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to EPA. Within the later of thirty (30) days of entry of this Consent Decree, or ten (10) days after the written notice provided for in paragraph 5, Settling Defendant shall pay to EPA Six Hundred Thousand Dollars (\$600,000) for deposit

into the EPA Hazardous Substance Superfund in reimbursement of EPA's Past Response Costs incurred in connection with the Site.

5. Payment by Settling Defendant shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant in writing by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree.

6. At the time of payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to:

Docket Clerk (3RC00)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19107-2029

and to :

Barbara Borden (3PM30)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19107-2029

7. Such notice shall reference the EPA Region and Site/Spill Identification Number 035Z, DOJ case number 90-11-3-06583/1, and the civil action number.

8. a. As soon as reasonably practicable after the date of entry of this Consent Decree, the United States, on behalf of Settling Federal Agencies, shall pay to the Settling Defendant Two Hundred Eighty Three Thousand Seven Hundred and Seventy Nine Dollars

(\$283,779.00), in reimbursement of FMC Past and FMC Future Response Costs at the Site, by ACH Electronic Funds Transfer in accordance with instructions provided by Settling Defendant in writing.

b. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

c. In the event that the payment required by Paragraph 8.a is not made within ninety (90) days of entry of this Consent Decree, Interest on the unpaid balance shall be paid, commencing on the Effective Date and accruing through the date of payment.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) and 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any amount due under Paragraph 4 is not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 9, Five Hundred Dollars (\$500.00) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 035Z, DOJ Case Number 90-11-3-06583/1, and the civil action number. Settling Defendant shall send the check (and any accompanying letter) to:

U.S. EPA, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 035Z, DOJ Case Number 90-11-3-06583/1, and the civil action number. Settling Defendant also shall send notice of payment to the following addressees:

Docket Clerk (3RC00)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19107-2029

Barbara Borden (3PM30)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19107-2029

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section VI shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section VI, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

14. Covenant to Settling Defendant by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect

upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

15. Covenant to Settling Federal Agencies by EPA. In consideration of the payments that will be made by Settling Federal Agencies under the terms of this Consent Decree, and except as specifically provided in Section VIII (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover Past Response Costs and Future Response Costs. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant and Settling Federal Agencies with respect to all matters not expressly included within the Covenant to Settling Defendant by United States and the Covenant to Settling Federal Agencies by EPA in Section VII. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to:

- a. liability for failure of Settling Defendant or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANT BY SETTLING DEFENDANT

17. Covenant to United States, including Settling Federal Agencies, for Past Response Costs: Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, including the Settling Federal Agencies and any department, agencies or instrumentality of the United States, or its contractors or employees, with respect to Past Response Costs and FMC Past Response Costs, or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs and FMC Past Response Costs were incurred, including any claim under the

United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or pursuant to the Hazardous Sites Cleanup Act ("HSCA") of October 18, 1988, P.L. 756, 35 P.S. Sections 6020.101-6020.1305, as amended, relating to Past Response Costs and FMC Past Response Costs.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

19. Covenant to Settling Federal Agencies as to Future Response Costs:

a. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against Settling Federal Agencies, or their contractors or employees, with respect to Future Response Costs and FMC Future Response Costs, including but not limited to:

(1) any claim arising out of the response actions at the Site for which the Future Response Costs and FMC Future Response Costs shall be incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

(2) any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or pursuant to the Hazardous Sites Cleanup Act ("HSCA") of October

18, 1988, P.L. 756, 35 P.S. Sections 6020.101-6020.1305, as amended, relating to Future Response Costs and FMC Future Response Costs.

(3) Notwithstanding the foregoing provisions, Settling Defendant reserves, and this Consent Decree is without prejudice to, any claim or cause of action that Settling Defendant may have against one or more of the Settling Federal Agencies with respect to response costs, if any, for contamination that may come to be located at the Site after the date of lodging of the Consent Decree.

b. Settling Defendant shall indemnify and hold harmless Settling Federal Agencies against any and all past or future claims asserted against the Settling Federal Agencies for recovery or reimbursement of response costs with respect to Settling Federal Agencies Matters Addressed; provided, however, that Settling Defendant shall have no duty to indemnify or hold harmless the Settling Federal Agencies against any claim for recovery or reimbursement of response costs to the extent that such claim is based on contamination that may come to be located at the Site after the date of lodging of the Consent Decree.

X. COVENANT TO EPA BY SETTLING FEDERAL AGENCIES

20. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. §9507) based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to the Site, EPA Past Response Costs, EPA Future Response Costs, Settling Defendant Past Response Costs, Settling Defendant Future Response Costs, as defined herein, or this Consent Decree.

This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

21. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for Past Response Costs, and for response costs paid to EPA or incurred for work performed by any third party other than PADEP under an EPA order or decree at or in connection with the Site through the date of lodging of this Consent Decree.

23. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2), for Settling Federal Agencies Matters Addressed.

24. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no

later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII.

XII. ACCESS TO INFORMATION

26. Settling Defendant shall provide to EPA upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

27. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all

of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant assert such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including but not

limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

29. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records

created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

31. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

32. The United States acknowledges that the Settling Federal Agencies 1) are subject to all applicable Federal record retention laws, regulations, and policies; and 2) have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Settling Federal Agencies, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-06583/1)
P.O. Box 7611
Washington, D.C. 20044-7611

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-6-17818)
P.O. Box 23986
Washington, D.C. 20026-3986

As to EPA:

Gail Wilson (3RC43)
Senior Assistant Regional Counsel
EPA Region III
1650 Arch Street
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As to Settling Federal Agencies

Michael Schon
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986

Washington, D.C. 20026-3986

As to Settling Defendant:

John F. Stillmun
Assistant General Counsel
FMC Corporation
1735 Market Street
Philadelphia, PA 19103

XV. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

35. This Consent Decree and its appendix constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. Appendix A is attached to and incorporated into this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

37. If for any reason this Court should decline to approve this Consent Decree in the

form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

38. The undersigned representatives of the Settling Defendant to this Consent Decree and the Chief or Deputy Chief of the Environmental Enforcement Section and of the Environmental Defense Section for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

40. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree and stipulate that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree

shall constitute the final judgment between the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corporation, Civil Action No. 05-5663 (E.D. Pa.), relating to the East 10th Street Superfund Site.

FOR THE UNITED STATES OF AMERICA

MATTHEW MCKEOWN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

By:

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division

Nancy Flickinger
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MARGARET L. HUTCHINSON
Assistant United States Attorney
Eastern District of Pennsylvania
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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corporation, Civil Action No. 05-5663 (E.D. Pa.), relating to the East 10th Street Superfund Site.

DONALD S. WELSH
Regional Administrator
Region III
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

WILLIAM C. EARLY
Regional Counsel
Region III
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

GAIL P. WILSON
Senior Assistant Regional Counsel
Region III
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. FMC Corporation, Civil Action No. 05-5663 (E.D. Pa.), relating to the East 10th Street Superfund Site.

FOR DEFENDANT FMC Corporation

Date: 2/5/07

ROBERT T. FORBES
Director, Environment
FMC Corporation
1735 Market Street
Philadelphia, PA 19103

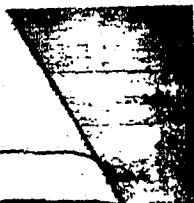
Agent Authorized to Accept Service on Behalf of Above-signed Party:


Name: John F. Stillmun

Title: Assistant General Counsel

Address: FMC Corporation
1735 Market Street
Philadelphia, PA 19103

APPENDIX A



	
DATE: 1/4/91	SITE: E. 10th STREET
ENGINEER: NAE	PREPARED FOR: USEPA REGION III
TITLE: SITE DIAGRAM (PRELIMINARY ANSWERS)	